



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Jonathan  
Fernandes, Police Officer (S9999A),  
Berkeley Township

List Removal Appeal

CSC Docket No. 2021-1394

ISSUED: SEPTEMBER 7, 2021 (HS)

Jonathan Fernandes appeals the removal of his name from the eligible list for Police Officer (S9999A), Berkeley Township on the basis of an unsatisfactory driving record.

The appellant, a disabled veteran, took and passed the open competitive examination for Police Officer (S9999A), which had a closing date of August 31, 2019. The resulting eligible list promulgated on May 15, 2020 and expires on May 14, 2022. The appellant's name was certified to the appointing authority on June 15, 2020. In disposing of the certification, the appointing authority requested the removal of the appellant's name on the basis of an unsatisfactory driving record. Specifically, the appellant's driving record included driver's license suspensions from: January 28, 2011 to August 17, 2012;<sup>1</sup> October 4, 2013 to October 24, 2013;<sup>2</sup> October 27, 2013 to November 1, 2013 (nonpayment of insurance surcharge); and March 26, 2014 to February 13, 2017.<sup>3</sup> His driving record also reflected the following violations: disregard of stop sign on September 11, 2010; unlicensed driver on May 6, 2011, October 27, 2013 and January 17, 2014; no license, registration or

<sup>1</sup> Orders of suspension went into effect on January 28, 2011 (failure to appear), September 9, 2011 (failure to appear), and July 18, 2012 (unlicensed driver).

<sup>2</sup> Orders of suspension went into effect on October 4, 2013 (Parking Offenses Adjudication Act) and October 19, 2013 (Parking Offenses Adjudication Act).

<sup>3</sup> Orders of suspension went into effect on March 26, 2014 (fail to comply court install order), June 16, 2014 (uninsured motorist), August 1, 2014 (failure to appear), August 19, 2014 (Parking Offenses Adjudication Act), January 11, 2015 (nonpayment of insurance surcharge), November 1, 2015 (nonpayment of insurance surcharge), and June 12, 2016 (nonpayment of insurance surcharge).

insurance ID in possession on April 20, 2012; and careless driving on April 20, 2012. In support, the appointing authority submitted the appellant's certified driver abstract.

On appeal to the Civil Service Commission (Commission), the appellant states that under the appointing authority's automatic disqualifiers, no moving violations are permitted within three years. He maintains that this condition does not apply to him, so he cannot be disqualified. The appellant notes that he is currently employed by the New Jersey Department of Transportation as a Highway Operations Technician Trainee and argues that the hiring requirements for that position revolved around the applicant's driving record. He adds that he has obtained his Commercial Driver's License-A (CDL-A). The appellant claims that the appointing authority is using his driving record as a cover to discriminate against him for being a disabled combat veteran.

In response, the appointing authority, represented by Christopher J. Dasti, Esq., relies on the appellant's previously described driving record. The appointing authority adds that there are numerous discrepancies, summarized below, between the appellant's 2017 preemployment application<sup>4</sup> and his 2020 application:

<b>Question</b>	<b>2017 Response</b>	<b>2020 Response</b>
Have you ever been fingerprinted?	2013 Seaside Park, suspended driver; 2011 Ocean County, suspended driver; 2009 Passaic County, warrant for ticket issued by Montclair Police Department	2013 Seaside Park, suspended driver; 2017 Berkeley Township, Police Application
Has any former spouse/fiancée/significant other/dating partner ever been arrested, interviewed, detained or convicted by any law enforcement agency?	Yes	No
Were you raised (for any period of time) by anyone other than your parents, provide dates & information concerning those who raised you	Yes	No

<sup>4</sup> The appellant had previously been certified to the appointing authority on April 17, 2017 from the eligible list for Police Officer (S9999U).

Question	2017 Response	2020 Response
Have you ever taken a test for or applied to, or are you currently on any employment list for any other law enforcement agency?	2017 New Jersey State Police, disqualified; 2017 New Jersey Department of Corrections, disqualified; 2011 Clifton Police Department, never notified	2017 Berkeley Township, disqualified; 2011 Clifton Police Department, disqualified
Have you ever failed to file income tax returns?	Yes, 2015, 2014	No

In addition, the appointing authority maintains that the appellant inaccurately answered “No” in response to the following questions on his 2020 application: “To your knowledge, has any law enforcement agency ever been called, or responded to any home, residence, room in which you resided, occupied or on you at any location for any reason?” and “Have you ever been stopped, questioned or held as a suspicious person or investigated by any law enforcement agency or private or corporate security for any reason?” However, as of March 10, 2011, the appellant was the suspect in a theft of services investigation in West Caldwell, New Jersey.<sup>5</sup> The appellant also provided no answer to the question, “Have you ever intentionally or unintentionally injured anyone as a result of a fight?” on his 2020 application. In support, the appointing authority submits excerpts from the appellant’s 2017 and 2020 preemployment applications and the West Caldwell Police Department complaint report.

In reply, the appellant states, with respect to the theft of services investigation, that “[i]t was never been brought to [his] attention that a police report was ever filed.” The appellant also argues that the discrepancies in his applications are not relevant to the appointing authority’s choice to disqualify him based on his driving record. According to the appellant, those discrepancies should have been listed as the main disqualifying reason if they were a true concern.

In reply, the appointing authority initially contends that the appellant’s reply should be disregarded as untimely. On the merits, the appointing authority maintains that the reply is not supported by the record and that it is not discriminating against the appellant in any way.

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<sup>5</sup> According to the West Caldwell Police Department complaint report, the appellant had purchased fuel and been unable to pay for it at the time. Days later, he went to the police department showing a receipt for the fuel. No further action was taken.

## CONCLUSION

Initially, it is noted that the appointing authority contends that the appellant provided an untimely reply. However, there is no jurisdictional statutory timeline within which a party is required to reply. *See, e.g., In the Matter of Michael Compton* (MSB, decided May 18, 2005). In addition, in order for the Commission to make a reasoned decision in a matter, it must review a complete record. *See, e.g., In the Matter of James Burke* (MSB, decided June 22, 2005). Moreover, the appointing authority had the opportunity to reply. As such, there is no basis to disregard the appellant's reply.

The appellant argues that his name cannot be removed from the subject eligible list on the basis of his driving record since his record does not fit within the appointing authority's automatic disqualifiers. However, the Commission emphasizes that it must decide each list removal appeal on the basis of the record presented and is not bound by the criteria utilized by the appointing authority. *See, e.g., In the Matter of Debra Dygon* (MSB, decided May 23, 2000).

*N.J.A.C.* 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)9, allows the Commission to remove an eligible's name from an eligible list for other sufficient reasons. Removal for other sufficient reasons includes, but is not limited to, a consideration that based on a candidate's background and recognizing the nature of the position at issue, a person should not be eligible for appointment. Additionally, the Commission, in its discretion, has the authority to remove candidates from lists for law enforcement titles based on their driving records since certain motor vehicle infractions reflect a disregard for the law and are incompatible with the duties of a law enforcement officer. *See In the Matter of Pedro Rosado v. City of Newark*, Docket No. A-4129-01T1 (App. Div. June 6, 2003); *In the Matter of Yolanda Colson*, Docket No. A-5590-00T3 (App. Div. June 6, 2002); *Brendan W. Joy v. City of Bayonne Police Department*, Docket No. A-6940-96TE (App. Div. June 19, 1998).

*N.J.A.C.* 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)6, allows the Commission to remove an eligible's name from an eligible list when he has made a false statement of any material fact or attempted any deception or fraud in any part of the selection or appointment process.

*N.J.A.C.* 4A:4-6.3(b), in conjunction with *N.J.A.C.* 4A:4-4.7(d), provides that the appellant has the burden of proof to show by a preponderance of the evidence that an appointing authority's decision to remove his name from an eligible list was in error.

The appellant's driving record reflects several violations and license suspensions. While the Commission recognizes that many of the orders of suspension on the appellant's record appear to have stemmed from financial

reasons, many others did not. In this regard, the appellant's license has also been ordered suspended for reasons such as failure to appear, driving while unlicensed, and parking offenses. The appellant highlights his appointment as a Highway Operations Technician Trainee, arguing that the hiring requirements revolved around his driving record, and maintains that he has obtained his CDL-A. Nevertheless, the appellant's ability to drive a vehicle in a safe manner is not the main issue in determining whether or not he should remain eligible to be a Police Officer. Driving infractions evidence disregard for the motor vehicle laws and demonstrate the exercise of poor judgment. In this case, the appellant's driving record shows a pattern of disregard for the law and questionable judgment on the appellant's part. Such qualities are unacceptable for an individual seeking a position as a municipal Police Officer. *See Joy, supra.*

The record also reflects that there were numerous discrepancies between the appellant's answers on his 2017 preemployment application and those on his 2020 application. Further, on his 2020 application, the appellant provided no answer to the question concerning whether he had ever intentionally or unintentionally injured anyone as a result of a fight and omitted the matter of his being a suspect in a theft of services investigation related to his purchase of fuel. Concerning that investigation, the appellant's argument that he was unaware that a police report was filed is beside the point. The relevant questions on the application were phrased in terms of whether any law enforcement agency had been called on the applicant and whether the applicant had ever been investigated by any law enforcement agency. The West Caldwell Police Department complaint report, the substance of which the appellant does not seriously dispute, indicates that the appellant went to the police department showing a receipt for the fuel. As such, irrespective of the appellant's alleged lack of awareness of the filing of a police report, the questions should have been answered in the affirmative. It must be emphasized that it is incumbent upon an applicant, particularly an applicant for a sensitive position such as a Police Officer, to ensure that his preemployment application is a complete and accurate depiction of his history. In this regard, the Appellate Division of the New Jersey Superior Court, in *In the Matter of Nicholas D'Alessio*, Docket No. A-3901-01T3 (App. Div. September 2, 2003), affirmed the removal of a candidate's name based on falsification of his employment application and noted that the primary inquiry in such a case is whether the candidate withheld information that was material to the position sought, not whether there was any intent to deceive on the part of the applicant. An applicant must be held accountable for the accuracy of the information submitted on an application for employment and risks omitting or forgetting any information at his peril. *See In the Matter of Curtis D. Brown* (MSB, decided September 5, 1991) (An honest mistake is not an allowable excuse for omitting relevant information from an application).

The discrepancies and omissions in this case are sufficient cause to remove the appellant's name from the eligible list. The types of discrepancies and

omissions presented are clearly significant and cannot be condoned as such information is crucial in an appointing authority's assessment of a candidate's suitability for the position. Indeed, an appointing authority's assessment of a prospective employee could be influenced by such information, especially for a position in law enforcement. Therefore, the information described earlier, which the appellant failed to disclose or which involved discrepancies, is considered material and should have been accurately presented on his application. The appellant's failure to do so is indicative of his questionable judgment. Such qualities are unacceptable for an individual seeking a position as a Police Officer.

The Commission notes that a Police Officer is a law enforcement employee who must enforce and promote adherence to the law. Municipal Police Officers hold highly visible and sensitive positions within the community and the standard for an applicant includes good character and the image of utmost confidence and trust. *See Moorestown v. Armstrong*, 89 N.J. Super. 560 (App. Div. 1965), *cert. denied*, 47 N.J. 80 (1966). *See also In re Phillips*, 117 N.J. 567 (1990). The public expects municipal Police Officers to present a personal background that exhibits respect for the law and rules. Accordingly, notwithstanding the appellant's belief that the appointing authority engaged in discrimination on the basis of his disabled veteran status, there is sufficient cause to remove his name from the subject eligible list.

A final comment is warranted. The appellant argued that if the discrepancies between his applications were a true concern, the appointing authority should have listed them as the main disqualifying reason. The Commission is unpersuaded. The appointing authority chose to dispose of the certification citing the appellant's driving record, as it was entitled to do. It then presented additional reasons to support its decision to remove the appellant's name from the eligible list in response to the instant appeal, which it was entitled to do as well. *See, e.g., In the Matter of Matthew Bermudez*, Docket No. A-0373-19T1 (App. Div. January 22, 2021) (as record further developed on appeal before the Commission to include eligible's employment and disciplinary history as well as previously cited driving record, appointing authority's decision to remove eligible from list was only bolstered). Moreover, the appellant had the opportunity to reply to the appointing authority.

### **ORDER**

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 1<sup>ST</sup> DAY OF SEPTEMBER, 2021

*Deirdre' L. Webster Cobb*

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